

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

New Orleans, Louisiana

P&O PORTS LOUISIANA, INC.
Employer

and

Case No. 15-RC-8318

**GENERAL LONGSHORE WORKERS LOCAL
3000**
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter called the Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The stipulations of the parties and the record shows that the Employer, P&O Ports Louisiana, Inc., a Louisiana corporation with a place of business located in New Orleans, Louisiana, is engaged in the loading and unloading of ships at its facility located in New Orleans, Louisiana, the only facility involved herein. During the past 12 months, a representative period, the Employer purchased and received at its New Orleans, Louisiana, facility goods valued in excess of \$50,000 directly from points located outside the state of Louisiana.

¹ Both parties filed briefs which have been duly considered.

Based on the stipulations of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.²

4. A question affecting commerce exists concerning the representation of certain employees of the Employer with the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner is the collective bargaining representative of two units of the Employer's employees: one consisting of crane operators and the other comprised of approximately 12 to 14 maintenance and repair employees employed by the Employer at its New Orleans facility. The Petitioner is seeking an election among 3 unrepresented employees: 2 utility men (UM), and 1 water boy (WB) to determine if they desire to be represented by the Petitioner in the existing maintenance and repair unit or whether they wish to remain unrepresented.³

The Employer contends that the UMs and WB would not be an appropriate addition to the existing maintenance and repair unit and that the only appropriate unit which included these three employees would be a separate unit limited to these individuals. The Petitioner, though seeking a self determination election among these three employees, is willing to proceed to an election in any unit found appropriate herein.

Gus Bertucci is the shop manager at the site, and he has four people who report directly to him: Maintenance Manager David Heidel, Leadman Walter Treadway, his assistant Charlene Miorana, and Crane Superintendent Charles Raymond.

The employees in the maintenance and repair unit represented by the Petitioner work under the supervision of Heidel and Treadway. Treadway supervises the 10 mechanics and Heidel is

² The parties stipulated that the Petitioner is a labor organization as defined by the Act.

³ The Petitioner amended its petition at the hearing to exclude the classification of overhead door repair persons from the petition.

responsible for the supervision of two overhead door repair persons (ODR). The WB the Petitioner seeks to represent is supervised by Treadway while the two UMs work under the direction of Heidel.

Some of the mechanics covered by the contract perform repair and maintenance work on lift truck equipment. Others are gear men who assemble, maintain, and deliver stevedoring equipment to and from ships or are individuals who repair containers or truck chassis.

Joseph Lee, the WB, was hired because the CBA for the longshoremen requires that the Employer provide the longshore gangs with water. He is supervised by Treadway, the supervisor of the mechanics.

Lee works out of the gear shop, which is in the same building as the mechanical shop. His responsibilities include filling five gallon containers with ice and water at the M&R Building and driving a pickup truck about 600 feet to the terminal building to distribute the water to the longshoremen. The WB also provides water to clerks and freight handlers in the terminal building. Sometimes water is sent to the Employer's facility in Chalmette ten miles away. When that occurs, Lee prepares the water and another employee, usually one of the mechanics in the gear yard, drives it to Chalmette. The record shows that Lee has also helped the UMs paint offices and has assisted them in minor plumbing repairs such as clearing clogged lines. When Lee is not available a mechanic or Treadway fills in for him. Treadway also frequently prepares water for evening workers.

The UMs, also known as sweepers, were initially hired as temporary employees. They work out of the mechanics' shop where the gear men (mechanics) are headquartered. They generally work from 7:00 a.m. to 3:00 or 4:00 p.m. Their responsibilities include keeping the offices and terminal areas clean, cutting grass and disposing of trash. They have also repaired bathrooms, toilets, and plumbing, painted offices, repaired sheet metal damage to the buildings' siding, done concrete work and assisted the two ODR personnel recently accreted to the unit in various ways including helping to mix and pour cement. As earlier noted, they, like the ODR, are supervised by Heidel, but they also report directly to Bertucci.

The three petitioned-for employees earn \$10.00 per hour and do not enjoy any pension or medical benefits. The employees in the maintenance and repair unit, on the other hand, are paid between \$14.00 and \$16.50 and receive fringe benefits. The UMs and WB do not work nights or evenings as a general rule. Bargaining unit employees, however, work evenings if there is work to be done. The UMs and WB take their lunch breaks at the same time as bargaining unit employees. They also wear the same Employer-provided uniform as bargaining unit personnel.

The Employer contends that the three petitioned-for employees lack the skill necessary to perform the work done by bargaining unit employees. It also argues that they do not, unlike bargaining unit employees, repair equipment, and do not, for the most part, work alongside them.

In a case such as this where there is an unopposed incumbent union and the application of Sections 9(b)(1) or (2) of the Act is not involved, it is not uncommon for a union to seek to represent a residual unit or an unrepresented fringe group. In such situations, where the petitioner is the only union involved, the residual employees are not given the option of representation by the union in a separate unit, even if they could have constituted an appropriate residual unit had an opposing union sought to represent them. *St. John's Hospital*, 307 NLRB 767, 768 (1992); *Budd Company*, 154 NLRB 421 (1965); *McKeesport Hospital*, 220 NLRB 1141 (1975). Rather, they are given the opportunity to decide whether they wish to be part of the existing unit or whether they wish to remain unrepresented.

I find that the instant case presents such a situation. I further find that the inclusion of the petitioned for employees in the existing maintenance and repair unit would not render that unit inappropriate. They are members of the maintenance and repair department and share the same supervision as bargaining unit personnel. Like the mechanics, the UMs and WB perform maintenance functions. They work out of the same general area as the bargaining unit employees, wear the same Employer-provided uniform as unit employees, and take their lunch breaks at the same time as the other employees in the maintenance and repair department. There appears to be some interaction between the petitioned-for employees and those employed in the maintenance and repair

unit. As earlier noted, it is not uncommon for maintenance and repair employees to fill in for the WB when the need arises.⁴ Further, the Board generally does not favor the creation of separate residual units, such as the unit sought by the Employer. *St. John's Hospital*, supra; *Airco, Inc.*, 273 NLRB 348, 349 (1984).

Accordingly I will direct an election among the employees in the following voting group to afford them the opportunity to determine whether they wish to be represented by the Petitioner in the same bargaining unit as the maintenance and repair employees or whether they wish to remain unrepresented.

All water boys and utility men (sweepers) employed by the Employer at its Henry Clay and Nashville Avenue facility in New Orleans, excluding all represented employees, office clerical employees, guards, professional and supervisors as defined by the Act.

Those eligible to vote will be asked whether they wish to be represented by the Petitioner. If a majority vote "Yes" they will be taken to have indicated a desire to be represented by the Petitioner as part of the maintenance and repair unit it currently represents. If a majority vote "No" they will be taken to have indicated a desire to remain unrepresented.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility

⁴ I find the cases cited by the Employer distinguishable. The *St. Luke's Hospital*, 234 NLRB 130 (1978) and *Boeing Co.*, 206 NLRB 167 (1973) cases the Employer references involved large numbers of employees spread out over several geographically separate sites. In addition, *St. Luke's Hospital* involved not only multiple work sites but multiple Employers as well. Like *St. Lukes* and *Boeing*, *Carl Buddig & Co.*, 328 NLRB No. 139 (1999) involved more than one labor organization.

period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by General Longshore Workers Local 3000.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the New Orleans Regional Office, 1515 Poydras Street, Suite 610, New Orleans, Louisiana 70112-3723 on or before January 26, 2001.

NOTICE POSTING REQUIREMENT

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. If the employer has not received a notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by February 2, 2001.

Dated this 19th day of January 2001, at New Orleans, Louisiana.

Curtis A. Wells
Regional Director, Region 15
National Labor Relations Board
1515 Poydras Street, Suite 610
New Orleans, LA 70112-3723

Classification Index Codes: 420 2380; 420 2900; 420 5000;
420 7303; 420 2933; 420 2951

Date of Issuance: 01/19/01